6. At all times material to this action, BITHLO (hereinafter also referred to as "Landlord"), owned a communications transmission tower ("Tower") located in Bithlo, Florida, near Orlando, Florida.

7. At all times material to this action, Plaintiff, RAINBOW (hereinafter also referred to as "Tenant"), was the permittee of television station Channel 65, Orlando, Florida (the "Station"), and desired to place and operate the antenna for the "Station" at a suitable location. The Tenant had been granted a Construction Permit ("Permit") issued by the Federal Communications Commission ("FCC"), and, based upon BITHLO's representations and the execution of a Lease Agreement with the Defendants as set forth herein, filed a site change application and received FCC approval to relocate its antenna to the "Tower" and install its transmitter in the transmitter building on the Landlord's premises.

8. On or about January 6, 1986, the Plaintiff ("Tenant") entered into a Lease Agreement ("Lease") with BITHLO through its General Partners, GANNETT TOWER COMPANY and MPE TOWER, INC. A copy of said Lease Agreement is attached hereto and marked as Exhibit "A", and is incorporated in its entirety by reference.

9. Prior to entering into the Lease, the Plaintiff/Tenant had made it clear to the Defendant/Landlord that Tenant insisted, as a condition precedent to executing a lease, upon obtaining the top television broadcasting antenna space located on the Bithlo Tower for its sole and exclusive use, including the aperture of said slot. It was further clear from the representations made by

the Landlord, that there would only be two slots on the Tower and only two TV stations would be operating from said Tower; to wit, one television antenna in the upper slot of the Tower one below that slot on the Tower.

10. Landlord, in an attempt to obtain an agreement with Tenant, created a situation of real or illusory competition between the Tenant and Channel 52 for the "top slot", and represented that a lease would be signed on a first-come, first-served basis for the top slot, with the other TV station being relegated to the lower of the two slots.

11. The "top slot" is approximately 46 feet in height consisting of a base at 1470 feet above ground, a top at 1516 feet above ground and a radiation center at a height of approximately 1,493 feet above the ground. This 46 foot distance between the top and bottom of the "top slot" and a 360 degree cylinder circling the tower at this level constitutes the top slot's "aperture". Operating from the "top slot" enables the Tenant to transmit its signal to the widest possible audience, including Orlando, Melbourne, and Daytona Beach, have exclusive possession of a highly desirable centrally located transmitter site and satisfy the FCC.

12. In the absence of Tenant receiving the "top slot" and exclusive use of its aperture, Tenant would not have entered into the "Lease" and would have sought space on another tower or would have built its own tower.

13. The aforementioned facts were known to the Defendant/Landlord and was discussed by the parties and became the

subject of communications and agreement between the parties, prior to their entering into the "Lease", and were incorporated into the "Lease".

14. Even though RAINBOW, the Plaintiff/Tenant, was aware that the FCC's grant of the Permit for Channel 65 to RAINBOW was being challenged in the Courts by rejected applicants who sought to obtain the FCC permit for Channel 65, Plaintiff/Tenant nevertheless entered into the "Lease" and continued to make the required lease payments over the course of five years in order to preserve its top antenna slot (including the aperture of that slot) so that it would be available to Tenant at the conclusion of the litigation when Plaintiff was prepared to go forward with the erection of its antenna and the construction of the transmitter building. Defendant accepted said rent knowing that Plaintiff was preserving its exclusive rights to the "top slot" and its aperture.

15. At all times material to this action, the Defendant/Landlord represented to Plaintiff/Tenant that the "Lease" would provide Plaintiff with exclusive use of the top slot and its aperture, and knew that Plaintiff would execute the Lease only with that assurance. After the Lease was executed by the parties, Plaintiff furnished Defendant with an "Engineering Exhibit Application for Modification of Television Construction Permit" filed for RAINBOW by Jules Cohen & Associates dated February 3, 1986, which document was submitted to the FCC and approved by the FCC and specifically referred to the RAINBOW/Channel 65 antenna site as having a radiation center of 1,493 feet above ground level.

This Exhibit reaffirms the agreement between the parties as previously set forth herein.

SPECIFIC PERFORMANCE

16. Plaintiff realleges and reavers paragraphs 1 through 15 as if set forth herein.

17. Defendant/Landlord has advised the Plaintiff/Tenant that it intends to allow a television competitor of Plaintiff to occupy an antenna position within the aperture of Plaintiff/Tenant's slot. On October 31, 1990, Defendant/Landlord gave the Plaintiff/Tenant notice that it would allow Plaintiff to continue to occupy the "top slot" but not on an exclusive basis and that failure to agree would constitute a breach. This action constitutes an anticipatory breach by the Landlord of the "Lease". It means that instead of Plaintiff/Tenant having exclusive use of that top slot on the Tower, multiple antennae will be positioned within a 360 degree cylinder (aperture) of the slot leased to Plaintiff/Tenant.

18. Plaintiff/Tenant has been advised that the Defendant/Landlord intends to allow Press Broadcasting Company ("Press"), to place an antenna on the Tower within the aperture of the top slot previously and currently leased to Plaintiff/Tenant. Press is a direct competitor to the Plaintiff, and currently operates from a different location. From its present location, Press covers a portion of, but not all, of the area to be covered by Plaintiff operating from the Bithlo Tower. If Press is allowed to lease the "top slot" on the Tower, the relocation would enable Press to compete directly with the Plaintiff by now covering the

identical areas of the market which would be covered by Plaintiff.

19. The intended action of the Defendant/Landlord to execute a lease which would permit Press to occupy the same "top slot" within the aperture of that slot together with Plaintiff/Tenant would cause severe and irreparable harm to the Plaintiff for the following reasons: Press operates an established station in the market and by permitting its relocation to the "top slot" on the Bithlo Tower, it would permit Press to shift its coverage of the market into the identical areas as the Plaintiff, in direct competition with the Plaintiff.

20. In 1986 Press offered to buy an option to acquire Plaintiff/Rainbow for a price exceeding $15 million dollars because of its exclusive occupancy of the top slot on the Bithlo Tower; such offer was unsolicited by Rainbow and rejected by Rainbow.

21. But for Defendant/Landlord's improper action in permitting or intending to permit Press' usage of the top slot on the Bithlo Tower, Plaintiff/Tenant would be the fifth station and the only independent television station transmitting from the center of the market which can presently only accommodate five stations from an economic viability standpoint. Such a position would have assured the viability of Plaintiff's station.

22. There are no remaining vacant allocations of television channels in the Orlando/Melbourne/Daytona Beach area, therefore no additional stations can be licensed. In the absence of a proposed lease on the Bithlo Tower by the Defendant/Landlord to Press, Plaintiff would not have another independent station competing in

its same marketing area. It was because of the allocation and competitive situation that Plaintiff applied for its permit in the first place, leased the top slot and its aperture on the Bithlo Tower, and paid rent for almost five years (said rents paid being approximately $250,000) while the FCC's decision was being challenged.

23. It is anticipated that the Defendant/Landlord will immediately execute a lease with Press to allow the construction of its antenna within the top slot and its aperture. Thus, the relief sought by the Plaintiff/Tenant is of an emergency nature in order to prevent irreparable harm.

24. Plaintiff/Tenant has complied with all conditions precedent.

25. Plaintiff/Tenant does not have an adequate remedy at law.

WHEREFORE, Plaintiff/Tenant moves this Court to specifically enforce the "Lease" and to preclude the Defendant/Landlord from permitting another TV station from occupying the top slot and its aperture on the Tower, and for such other relief as this Court shall deem just and proper.

TEMPORARY AND PERMANENT INJUNCTION

26. Plaintiff/Tenant realleges and reavers each of the preceding paragraphs, and further alleges:

27. Defendant/Landlord, in an attempt to obtain additional revenue from its Tower and in total violation of Plaintiff's rights, has announced to Plaintiff/Tenant that it intends to place a competitor TV station in a position on its Tower to which

Plaintiff/Tenant claims exclusive use and occupancy. Defendant/Landlord intends to enter into a lease with a competitor of the Plaintiff for the antenna space reserved exclusively for the Plaintiff, and to allow such prospective tenant to immediately erect an antenna and to commence construction of a transmission building. The prospective tenant is Press, an existing independent TV station in the Orlando area which seeks to expand or shift its marketing area so as to compete directly with the marketing area to be covered by the Plaintiff, since both the Plaintiff and Press would be on the same height on the tower and thus would have the identical transmission capabilities. If Press is allowed to transmit from this site, it will render Plaintiff's permit valueless. See Affidavit from Susan Harrison attached hereto and made a part hereof as Exhibit "B". If Press is not allowed on the top slot, it can still transmit from its present location and will suffer no harm.

28. Plaintiff has paid rent for almost five years in order to preserve the exclusive use of the "top slot" on the Tower and assure its viability, even though it was not actually transmitting from said Tower.

29. Plaintiff is now prepared to build and place its antenna on its "top slot" on the Tower and to commence construction of the transmitter building on Defendant's premises in accordance with its Lease. However, Plaintiff's permit for Channel 65 to transmit from the Tower is not a viable business opportunity for Plaintiff if, in fact, Defendant/Landlord is permitted to place additional TV

antennas within the "top slot" preserved by and leased to the Plaintiff.

30. Defendant/Landlord's damages, in the event that a temporary and permanent injunction is wrongfully issued, is solely its loss of potential additional lease payments. On the other hand, the injury to the Plaintiff/Tenant should Press occupy the same "top slot" and its aperture on the Tower, is irreparable since it would no longer make any business sense for Plaintiff/Tenant to proceed to go on the air. In e2ffect, five years of litigation expenses and lease payments on the part of the Plaintiff/Tenant to protect its permit and its exclusive "top slot" on a centrally located Tower, with no more TV stations being licensed by the FCC in that area, would have been for naught.

WHEREFORE, Plaintiff/Tenant moves this Court for the entry of a temporary injunction preventing Defendant/Landlord from leasing any space on the Tower within the aperture of the top slot to any other TV station, and for the issuance of a permanent injunction containing the same prohibition and compelling Defendant/Landlord to permit Plaintiff/Tenant to immediately start to build on Defendants' Tower.

RAINBOW BROADCASTING COMPANY,
a Florida Partnership

By: _____
JOSEPH REY, General Partner

STATE OF FLORIDA)
) ss.
COUNTY OF DADE)

BEFORE ME, the undersigned authority, this day personally appeared JOSEPH REY, as General Partner of RAINBOW BROADCASTING

COMPANY, a Florida Partnership, who being first duly sworn, acknowledged before me that he has reviewed the foregoing and the statements contained therein are true and correct.

WITNESS my hand and seal this 2nd day of ~~October~~ November, 1990, in the County and State aforesaid.

NOTARY PUBLIC, State of Florida

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. FEB. 4,1992
BONDED THRU GENERAL INS. UND.

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Coral Gables, Florida 33146
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MALCOLM H. FROMBERG

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 12th day of July, 1993, I have caused copies of the foregoing "Opposition of Press Broadcasting Company, Inc. to 'Petition for Reconsideration and Grant of Application for Assignment of Construction Permit'" to be placed in the United States mail, first class postage prepaid, addressed to the following individuals:

Roy J. Stewart, Chief (By Hand)
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 314
Washington, D.C. 20554

Barbara A. Kreisman, Chief (By Hand)
Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 702
Washington, D.C. 20554

Clay Pendarvis, Chief (By Hand)
Paul Gordon, Esquire
Television Branch, Video Services Division
Mass Media Bureau
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Counsel for Rainbow Broadcasting Company

/s/ Harry F. Cole
Harry F. Cole